In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1223

C. BURGLIN, ET AL., PETITIONERS

v.

THOMAS S. KLEPPE, SECRETARY OF THE INTERIOR, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A-32 to A-37) is reported at 527 F.2d 486. The opinion of the district court (Pet. App. A-26 to A-30) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on December 19, 1975, and a timely petition for rehearing was denied on January 27, 1976 (Pet. App. A-31). The petition for a writ of certiorari was filed on February 26, 1976. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the district court properly held that the Secretary of the Interior did not abuse his discretion, or otherwise act contrary to law, in rejecting petitioners' offers to enter into certain oil and gas leases.

STATUTE AND REGULATION INVOLVED

Section 17 of the Mineral Leasing Act of 1920, 41 Stat. 443, as amended, 30 U.S.C. 226, provides in pertinent part as follows:

> (a) *Authority of Secretary*
>
> All lands subject to disposition under this chapter which are known or believed to contain oil or gas deposits may be leased by the Secretary.
>
> * * * * *
>
> (c) *Lands not within geologic structure of a producing oil or gas field; first qualified applicant.*
>
> If the lands to be leased are not within any known geological structure of a producing oil or gas field, the person first making application for the lease who is qualified to hold a lease under this chapter shall be entitled to a lease of such lands without competitive bidding. Such leases shall be conditioned upon the payment by the lessee of a royalty of 12 1/2 per centum in amount or value of the production removed or sold from the lease.

43 C.F.R. 3111.1-1 (1973) is set forth in the petition at pages 5-6.

STATEMENT

During the latter half of 1968, petitioners filed with the Department of the Interior's Bureau of Land Management (BLM) numerous joint offers to enter into noncompetitive oil and gas leases for areas within the State of Alaska. These offers, which were made pursuant to Section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. 226, were submitted on a printed form made available by the Secretary of the Interior through the BLM. On each of the offers submitted to the BLM, the name and address of one

of the offerors, sometimes followed by the words "*et al.*," were typed in the appropriate space at the top of the form. Each offer also contained one legible signature as well as an illegible signature. The illegible signature was followed on each of the forms by the inscription "20 %," indicating that that party—whose identity was not otherwise disclosed on the forms as originally submitted—held a twenty percent interest in the particular offer. The BLM rejected the offers on the ground that, since one of the offerors in each instance could not be ascertained from the face of the offer, the offers failed to comply with the requirements set forth at 43 C.F.R. 3111.1-1. Petitioners appealed to the Department of the Interior's Board of Land Appeals, which affirmed in each case (Pet. App. A-27 to A-28, A-32 to A-33).[1]

Although petitioners subsequently cured the signature defects, the lands in question were withdrawn from oil and gas entry before they filed substitute offers. The lands were originally withdrawn by Public Land Order 4582, 34 Fed. Reg. 1025 (January 17, 1969) and have remained withdrawn under the Alaska Native Claims Settlement Act, 85 Stat. 688, 43 U.S.C. (Supp. IV) 1601 *et seq.* (December 18, 1971), and Public Land Order 5179, 37 Fed. Reg. 5579 (March 9, 1972). Since the lands were not available for oil and gas leasing at the time petitioners filed their substitute offers, the substitute offers were rejected by the BLM; the Board of Land Appeals again affirmed (Pet. App. A-28, A-33).

Petitioners then filed the present suits in the United States District Court for the District of Alaska, seeking declaratory and injunctive relief requiring the Secretary to enter into leases with them pursuant to their original offers.

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[1] *R.C. Bailey*, 7 I.B.L.A. 266; *Helen S. Bailey*, 8 I.B.L.A. 145; *R.C. Bailey and C. Burglin*, 10 I.B.L.A. 281; *Helen S. Bailey and C. Burglin*, 11 I.B.L.A. 51; *Earnest G. Carter*, 12 I.B.L.A. 181. The decisions of the BLM and of the Board of Land Appeals are reprinted at Pet. App. A-1 to A-25.

In support of their claims for relief, petitioners alleged that the rejection of their original lease offers had been unlawful because, *inter alia,* (1) the applicable statute and regulations do not require the identity of all offerors to be disclosed on lease offers; (2) employees in the BLM's regional offices in Fairbanks and Anchorage, where the original offers were filed, either knew or could have ascertained the identity of the offeror whose signature was illegible; (3) acceptance of the original offers for filing and the delay in informing them that their original offers were defective misled them to their detriment; and (4) rejection of the offers exacerbated the shortage of domestically produced oil and gas (Pet. 7-8).

After consolidating the suits, the district court granted defendants' motion for summary judgment (Pet. App. A-26 to A-30). The court of appeals affirmed (Pet. App. A-32 to A-37).

ARGUMENT

1. Petitioners concede (Pet. 6-7) that after the filing of their original offers, the Secretary of the Interior did not enter into leases encompassing the lands for which they had made offers. Petitioners concede as well (Pet. 7) that before they filed substitute offers for the lands in question, those lands had been withdrawn from entry for oil and gas leases. It necessarily follows from these conceded facts that, even if the Secretary erred in rejecting their original offers as defective, petitioners are not entitled to the relief they seek and that the district court properly granted defendants' motion for summary judgment. See Rule 56(c), Fed. R. Civ. P.

Section 1 of the Mineral Leasing Act of 1920, 41 Stat. 437, as amended, 30 U.S.C. 181, removed, among other things, lands containing deposits of oil and gas owned by the United States from entry under the general mining laws of the United States. Under Section 17(a) of the Act, 30 U.S.C. 226(a), lands that are believed to contain oil and gas deposits "may be leased by the Secretary [of the Interior]." In

administering these statutory provisions, the Secretary has broad discretion to determine whether to enter into oil and gas leases with private persons (*e.g., Udall* v. *Tallman,* 380 U.S. 1, 4), including noncompetitive leases such as those sought by petitioners. 30 U.S.C. 226(c); *McTiernan* v. *Franklin,* 508 F.2d 885, 887 (C.A. 10); *McDade* v. *Morton,* 353 F. Supp. 1006, 1010 (D. D.C.), affirmed, 494 F.2d 1156 (C.A. D.C.); *Pease* v. *Udall,* 332 F.2d 62, 63-64 (C.A. 9).

When the Secretary has determined that certain lands are available for leasing and has decided to lease such lands, "the first person making application for the lease * * * shall be entitled to a lease of such lands * * *." 30 U.S.C. 226(c). But the mere filing of an offer for a noncompetitive lease does not restrict the Secretary's discretion to decide whether the lands should be leased. *McTiernan* v. *Franklin, supra,* 508 F.2d at 888; *Schraier* v. *Hickel,* 419 F.2d 663, 666-667 (C.A. D.C.); *Hannifin* v. *Morton,* 444 F.2d 200, 203 (C.A. 10); *Ferry* v. *Udall,* 336 F.2d 706, 713 (C.A. 9), certiorari denied, 381 U.S. 904. If the withdrawal of particular lands precedes the consummation of leases for those lands, the Secretary is obligated to reject any outstanding offers to lease as well as any offers made while the lands are withdrawn. 43 C.F.R. 2091.1 (1973); *Pease* v. *Udall, supra.*

Thus, regardless whether the Secretary erred in concluding that petitioners' original offers to lease were defective, petitioners are not entitled to the relief they seek. Even if petitioners' offers were properly submitted, they were at most entitled to priority consideration. But this would have had practical significance only if the Secretary had decided to lease the lands in question. No such decision was made. The lands were ultimately withdrawn and thereafter the Secretary properly rejected petitioners' substitute offers.

2. While we therefore believe that petitioners' other contentions are not properly presented, we will briefly respond to them.

a. Petitioners did not allege in their complaint that the identities of all offerors were adequately disclosed in the original offers. They alleged instead that the identity of the offerors was either known to employees of the BLM or could have been ascertained with the exercise of reasonable diligence, that leases should have been issued to the offerors whose identities were disclosed in the offers and that the Secretary should be estopped from denying the validity of the original offers because of delay by his subordinates in informing them that the offers were defective.

As the court of appeals held (Pet. App. A-36), the Secretary properly required that the signatures on offers "be plainly legible or accompanied by a clear identification of all persons whose signatures appear thereon."[2] Petitioners' contention that the identity of the offerors was either known to some BLM employees or could have been ascertained fails to recognize that the responsibility for complying with the regulations rests upon the individual offerors.[3]

b. Petitioners' sweeping contentions that the withdrawal of the lands they had offered to lease decreased the availability of domestically produced oil and gas and was the

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[2]Petitioners rely upon the Secretary's decisions in *Mary Adele Monson*, 71 I.D. 269, and *Mary I. Arata*, 78 I.D. 397. But neither *Monson* nor *Arata* involved a failure to identify an offeror. The principal question presented in both cases concerned instead the validity of the signatures of offerors whose identity had been disclosed in the offers. The Secretary did not here dispute the validity or binding effect of the illegible signatures appearing on the offers submitted by petitioners.

[3]The offer form made available by the Secretary provides a specific space for disclosures of the names and addresses of the offerors, and the applicable regulations and the offer form itself specify that the required information must be typewritten or plainly printed in ink. See 43 C.F.R. 3111.1-1(a). Petitioners' failure to comply with these instructions, not official malfeasance, accounted for the rejection of their original offers.

result of a conspiracy of some sort between the "Oil Cartel" and the government were not substantiated and therefore could not survive defendants' motion for summary judgment. See 6 Moore's *Federal Practice*, par. 56.24 (2d ed. 1948), and cases discussed therein.[4]

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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Solicitor General.

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MAY 1976.

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[4]As the court of appeals observed (Pet. App. A-35 to A-36):

> We do not doubt that Congress' withdrawal of huge amounts of Alaskan land from lease entry perhaps restricted oil production in the United States at a time, as [petitioners] allege, of a "strong and pressing need for and a great shortage of domestically produced oil and gas." However, it is the proper function of Congress and the Executive to set and implement the national energy policy. It is not the function of the judiciary generally to investigate and review the wisdom of this policy. We are a court, not a committee of Congress or department of the Executive. [Petitioners'] complaints, couched in broad terms of public policy, simply do not allege a justiciable cause of action. The gravamen of this aspect of [petitioners'] compiaints is a policy determination for which judicially manageable standards are lacking. *See Baker* v. *Carr*, 369 U.S. 186 (1962).